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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Twenty-ninth session

SUMMARY RECORD (PARTIAL)* OF THE 605th MEETING

Held at Headquarters, New York,
on Wednesday, 12 June 1996, at 10 a.m.

Chairman: Mrs. PIAGGI de VANOSSI (Argentina)

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ELECTRONIC DATA INTERCHANGE: DRAFT MODEL LAW; POSSIBLE FUTURE WORK (continued)

* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.20 a.m.

ELECTRONIC DATA INTERCHANGE: DRAFT MODEL LAW; POSSIBLE FUTURE WORK (continued) (A/CN.9/XXIX/CRP.1/Add.11, A/CN.9/XXIX/CRP.2/Add.4 and Add.5)

1. The CHAIRMAN said the drafting group had submitted its report and the Commission should be in a position to adopt the draft Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication.

2. Ms. CRAGGS (United Kingdom) said that, while her delegation was anxious to adopt the draft Model Law, it still had some concerns with regard to the drafting of article 17, paragraphs 3 and 5.

3. With regard to article 17, paragraph 5, it was completely unclear what was meant by "termination" of a data message, who would effect such a termination, whether the message was terminated in practice or simply in legal effect, and whether such termination must be permanent. In order to answer some of those questions, the following sentence could be added at the end of the paragraph: "Nothing in this paragraph shall affect any right to resume the use of a data message for the purpose of conveying a right or obligation, provided that any paper document previously used for this purpose has first been rendered invalid."

4. With regard to article 17, paragraph 3, which referred to data messages as being "unique", all such messages were necessarily unique even if they duplicated an earlier message. Each data message was sent at a different time, and if sent to a different person, was obviously unique even though it might be transferring the same right or obligation. Similarly, if a series of data messages were used, transferring or purporting to transfer the same right to a series of different persons, each of those transfers was necessarily unique because the beneficiaries were different. All but the first transfer would be fraudulent, however, if the paragraph was interpreted as referring to a data message or transfer of a unique kind. No national law could or should implement the paragraph as currently drafted. The final clause of the paragraph could be replaced by the following: "provided that a reliable method is used to secure that data messages purporting to convey any right or obligation of a person may not be used by or on behalf of that person inconsistently with other data messages by which the right or obligation was conveyed by or on behalf of that person."

5. It would be preferable for article 17 to be considered further by the drafting group, but her delegation was prepared to accept the text of the Model Law as it stood, although with serious reservations.

6. Mr. BURMAN (United States of America) said that, at the current advanced stage of consideration, extensive restructuring of the text should be avoided. The term "unique" was widely employed in electronic commerce and conveyed the appropriate concept to individuals engaged in that field. It would also be inadvisable to spell out in any greater detail the implications of "termination", as referred to in article 17, paragraph 5.

7. Mr. CHOUKRI (Observer for Morocco) said his delegation found the United Kingdom proposals valid. With regard to the use of the term "unique" the final clause of article 17, paragraph 3, could be redrafted to read: "provided that a reliable instrument is used to make the data message the unique instrument adopted."

8. Mr. SANDOVAL LOPEZ (Chile) said his delegation shared the view of the United States. Delegations had been afforded many opportunities to express their views, and the drafting should not be reopened.

9. Mr. LLOYD (Australia) noted that the paragraphs in question represented a compromise text. The questions raised by the United Kingdom with regard to termination would be worked out in practice over time. The concept of "uniqueness" was indeed vague, and the new drafting proposed by the United Kingdom, which had added some clarity, could be included in the Guide.

10. Mr. PHUA (Singapore) and Ms. SABO (Observer for Canada) supported the suggestion of the representative of Australia.

11. Ms. CRAGGS (United Kingdom) said that, having expressed its concerns and made its position clear, her delegation was willing to proceed to the adoption of the Model Law, and would welcome the opportunity to have its concerns regarding the term "unique" included in the Guide.

12. The CHAIRMAN said she would take it that the Commission wished to adopt the draft decision contained in document A/CN.9/XXIX/CRP.1/Add.11.

13. It was so decided.

The discussion covered in the summary record ended at 11.15 a.m.